IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 18 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATION,AHMEDABAD.

Versus

UNION OF INDIA,MINISTRY OF DEFENCE,NEW DELHI.

Appearance:

1. First Appeal No. 18 of 1983
MR PRASHANT G DESAI for Petitioner No. 1
MR DN PATEL for Respondent No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 7/04/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Ahmedabad Municipal Corporation - appellant original plaintiff has filed this appeal under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 26th February, 1982, in Civil Suit No.2680 of 1977 filed by the plaintiff. The learned Judge by his impugned judgment has held that the Union of India - the defendant is exempted from liability of incremental contribution under the provisions of the Bombay Town Planning Act, 1954 (hereinafter referred to as `the said Act').

2. The facts giving rise to this appeal are as under:-

2.1 The Ahmedabad Municipal Corporation - plaintiff had filed a Civil Suit No.2680 of 1977 before the City Civil Court, Ahmedabad, and prayed for a decree that defendant Union of India be directed to pay to the plaintiff a sum of Rs.1,03,139.25p/- with 6% interest from the date of the suit till the payment and costs. The said amount represents "incremental contribution" levied by the plaintiff under the provisions of the said Act.

2.2 Mr.P.G.Desai, learned counsel has referred to plaint and other documents in connection with Town Planning Scheme, Ahmedabad 15 and made following submissions on facts:

2.2(A) There was a property namely piece of land originally bearing Survey Nos.154 and 155 of Dariapur Kazipur Asarwa part of Final Plot No.4 situated in the area of Dariapur Kazipur ad-measuring 50890 square yards. The plaintiff declared its intention to make the Town Planning Scheme for the area covering part of the revenue village of Asarwa, Dariapur, Kajipur under its Resolution No.46 dated 1.5.1953.

2.2(B) It was further submitted that the then Government of Bombay thereafter made further resolution on 9.11.1953 and refused to sanction the intention of the plaintiff Corporation - local authority till the area was included within the limits of the local authority. The local authority thereafter declared its intention again to make a scheme by its resolution dated 1.2.54. The then Government under its resolution dated 25.5.56 sanctioned the intention to make the draft town planning scheme for the area. The area under the scheme was situated on the northern boundary of the Corporation limits. It is

bounded on the north by the cantonment area, on the south by Magazine Fort and the area of Town Planning Scheme, Ahmedabad No.VII on the east and west by the area of Town Planning Scheme, Ahmedabad No.8. The total area comprised in this scheme is 75 Acres approximately. The area being adjacent to the magazine fort was prohibited for building use under Government Military Notification. It, therefore, remained undeveloped though quite ripe for building purposes. With the withdrawal of Government Notification and consequential removal of restriction for the development of this area for building purposes, it became fit for immediate development. But as it had no internal accesses and facilities for public services like water, drainage, lighting etc., quite essential for promotion of development, it remained barren and undeveloped. In order to extend these services and facilitate the speedy development of the area, the Ahmedabad Municipal Corporation got this area included within its limits.

2.2(C) The plaintiff in making this scheme, made departure from its past practice of planning an area under a Town Planning Scheme and prepared a comprehensive development scheme in such a way that the smallest building unit could get direct pucca approach with all public services, after keeping sufficient lands reserved for public purposes. The plaintiff accordingly prepared and published the draft scheme by a Notification in the extra-ordinary issue of Bombay Government Gazette dated 28.3.1957 (Part-II). The draft scheme so prepared and published was ultimately sanctioned by Government under its Notification dated 12.12.1957 subject to certain conditions mentioned therein.

2.2(D) The learned counsel submitted that in exercise of the powers conferred by Sec.31 of the said Act, the Government appointed a Town Planning Officer for the said draft scheme. That the Town Planning Officer so appointed, after following the procedure prescribed under the said Act, submitted to the Government of Gujarat the final Town Planning Scheme, Ahmedabad No.S. VII (Dariapur, Kajipur, Asarwa part) for its sanction as required by sub-section (2) of Sec.42 of the said Act. The Town Planning Officer gave his award on 3.12.64 (Exh.28) and held that the final scheme as now drawn up, incorporating the decisions of the Board of appeal, for the construction of asphalt, roads, storm water, drain, water supply pipe lines, undergone drainage, electric street lighting for the scheme area. The scheme also provides for school, pumping station, play-ground, etc.

The total estimated cost of works is Rs.7,02,100/-. These works are to be completed within a period of three years from the date of the final scheme comes into force. It was further held that the execution of the scheme was finally drawn up, the area included in the scheme will get all the necessary amenities for a happy community life, and it is hoped this part of the city will develop into a healthy suburb.

2.2(E) The Government of Gujarat, in exercise of the powers conferred by Sec.51 of the said Act, was pleased to sanction the final scheme by Notification dated 23.1.1965 and fixed the first day of March, 1965, as the date on which all the liabilities created by the scheme shall take effect and the final scheme was to come into force. Thus the Town Planning Scheme No.17 had come into force with effect from 1.3.1965 and had become a part of the said Act since that date.

2.3 It was further stated that as per the said final scheme the Government of India - Union of India defendant in suit has been shown as the owner of Survey Nos.154 and 155 ad-measuring about 28919 sq.yards and 54209 sq.yards respectively. That the said survey numbers have been reconstituted under the Town Planning Scheme and has been given Final Plot No.4 ad-measuring 50890 sq.yards. That the remaining land had been taken for the public purpose under the said scheme. Thus it is averred in the plaint that at present under the Town Planning Scheme No.17 (Dariapur, Kazipur, Asarwa part) Ahmedabad, the Government is the owner of Final Plot No.4 ad-measuring 50890 sq.yards. Thus under the said scheme the Government of India is liable to pay "incremental contribution" to the Corporation in this behalf under the provisions of the said Act.

2.4 It was further stated that under the provisions of the said Act the defendant was given option either to pay the amount of "incremental contribution" to the local authority in one lump sum or by 10(Ten) equal instalments. In the said Act, it is also further provided that if the person liable to pay the amount elects to pay the amount by instalments, he would be liable to pay interest at the rate of 4.5% per annum. The Government of India did not elect to pay the above said amount in one sum. Hence the defendant was bound to pay the above said amount of Rs.63,063/- in ten equal installments together with 4.5% interest. The first instalment of Rs.6303.30 paise become payable on 1.3.1965.

2.5 It was further stated that as the local authority has made a declaration for making a town planning scheme under the Bombay Town Planning Act, 1915 on 1.5.1953. The plaintiff submitted that during the course of making a town planning scheme, the Town Planning Act, 1915 were repealed by Bombay Town Planning Act, 1954. The plaintiff submitted that on the date of declaration, the Bombay Town Planning Act, 1915 was in force and the plaintiff has got powers to levy contribution under the Bombay Town Planning Act, 1915 and the land in question was liable to be levied contribution and the right of plaintiff to levy the contribution on the land in question was continued and the liability of the defendants was also continued for payment of contribution under the provisions of the said Act.

2.6 It was further stated that in view of the aforesaid facts the defendants are liable to pay the "incremental contribution" as fixed by the Town Planning Officer. The defendants had not preferred appeal against the decisions of the Town Planning Officer so far the amount of contribution is concerned. In that view of the matter, the decision of the Town Planning Officer as regards the amount of contribution has become final, conclusive and binding to the defendants. In that view of the matter, also now the defendants cannot raise any contentions or raise dispute about the liability of the payment of contribution fixed by the Town Planning Officer. It was further submitted that the betterment charge or incremental contribution levied under the said Act is not tax.

2.7 In view of the aforesaid facts, the plaintiff stated that the defendants are liable to pay the incremental contribution to the local authority as under:

Total amount of contribution levied under the scheme	Rs.63,063.00
Interest payable as per Act Sec.74 of the BTPA Act 1954	Rs.40,076.25
Less amount paid	Nil
Net amount payable	Rs.1,03,139.25

2.8 Thus the defendants are liable to pay the

plaintiff Ahmedabad Municipal Corporation, the amount of Rs.1,03,139.25/-.

2.9 It was further submitted that under section 76 of the said Act, for the dues of the local authority, a first statutory charge is created on the plot in question. Thus there is a statutory charge on the Final Plot No.4 situated in the T.P.S. No.17, Ahmedabad for the amount due to the local authority.

2.10 As the defendants have failed and neglect to make the payment the plaintiff addressed a statutory notice of demand on 16.12.1976 (Exh.34). The same has been received by the defendant on 20.12.76. Inspite of that the defendants have failed and neglect to pay the amount. Hence the plaintiffs have filed suit on 24.2.1977 claiming the said amount as an incremental contribution with 6% interest from the date of the suit till the payment.

3. The Union of India had filed a written statement before the City Civil Court, Ahmedabad (Exh.14). It was submitted that in view of Article 285(1) of the Constitution of India the property of the Union of India shall be exempted from all taxes i.e. incremental contribution imposed by the State or by an authority within a state. The said article makes it clear that the exemption applies to taxes levied by the local authority such as Municipal Corporation. It was submitted that under Article 366(28) of the Constitution of India `taxation' includes imposition of any tax or impose, whether general or local or special and "tax" shall be construed accordingly. It was submitted that Sec.76 of the said Act which lays down the mode of recovery also makes any sum of incremental contribution recoverable as if the amount thereof were a property tax. This is indicative of the fact that the incremental contribution claimed by the plaintiff in the present case is really in the nature of property tax and hence it is submitted that the defendant is exempted by virtue of Article 285(1) of the Constitution from payment of incremental contribution. For other facts the defendant denied by filing the written statement on 21.7.80.

3.1 Before the trial court issues were framed on 12.2.81 (Exh.17) and plaintiff produced certain documentary evidence in support of his contention particularly copy of award by Town Planning Officer (Exh.28), Notification dated 23.1.65 issued by Under Secretary, Rural Development, Government of Gujarat, sanctioning the final scheme (Exh.27). The record of

rights showing the Union of India as an owner of the land (Exh.29), the bill for obtaining incremental contribution from the Union of India (Exh.31). Extract of demand register (Exh.33), the copy of the notice dated 16.12.76 Exh.34 and the resolution of the Corporation at Exh.36 in this behalf. The defendant did not produce any documents in this behalf. The parties did not led any oral evidence in this behalf.

3.2 Thereafter the matter was heard by the learned City Civil Judge, Ahmedabad and the learned Judge by his impugned judgment has held that suit is maintainable at law. However the learned Judge come to the conclusion that in view of Article 285 of the Constitution of India, the defendant Union of India is exempted from liability of incremental contribution demanded by the plaintiff in this behalf. Ultimately the suit was dismissed by judgment and decree dated 26.2.1982.

4. Being aggrieved and dissatisfied with the said action the plaintiff has filed this appeal before this Court. The said appeal was admitted on 19th January, 1983.

5. On behalf of the appellant - plaintiff Mr.Prashant G.Desai, learned counsel has appeared and contended that the reasonings and findings of the learned Judge that amount of incremental contribution is exempted under Article 285(1) of the Constitution of India is errorneous, unjust and illegal. To substantiate his contention, learned counsel for the appellant has invited our attention to the provisions of The Bombay Town Planning Act, 1954 and The Bombay Town Planning Rules, 1955.

5.1 He has invited our attention to Sec.2(2) of the said Act which provides definition of "development plan" means a plan for the development or redevelopment or improvement of the entire area within the jurisdiction of a local authority prepared under sec.3.

Sec.2(5) provides "owner" includes any person for the time being received or entitled to receive whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purpose, the rents or profits of the property in connection with which it is used.

Sec.2(6) provides "plot" means a continuous portion of land held in one ownership.

Sec.2(7) provides "preliminary scheme" means a scheme relating to a town planning scheme prepared by the Town Planning Officer under section 45.

Sec.2(9) provides "reconstituted plot" means a plot which is in any way altered by the making of a town planning scheme.

Sec.3 provides development plan. Sec.4 provides declaration of intention of making development plan. Sec.5 provides manner of preparing development plan. Sec.7 provides contents of development plan. Sec.8 provides submission of development plan and other information to Government. Sec.10 provides power of Government to sanction development plan and consequences thereof. Sec.16 provides sanction for sub-division of plot or lay-out of private street. Sec.18 provides making and contents of town planning scheme.

Chapter IV provides declaration of intention to make a scheme and making of a draft scheme.

Sec.21 provides land in respect of which town planning scheme may be made. Sec.22 provides power of local authority to resolve on declaration of intention to make scheme. Sec.23 provides making and publication of draft scheme. Sec.24 provides power of State Government to require local authority to make scheme. Sec.25 provides contents of draft scheme. Sec.28 provides power of State Government to sanction scheme.

Chapter V provides the Town Planning Officer and the Board of Appeal.

Sec.31 provides appointment of Town Planning Officer. Sec.32 provides Duties of Town Planning Officer. Sec.34 provides appeal. Sec.35 provides Constitution of Board of Appeal. Sec.40 provides powers of Board to decide matters finally. Sec.43 provides decision of Town Planning Officer to be final in certain matters and variation of scheme in view of decision in appeal.

Chapter VI provides splitting up of scheme into

sections and preliminary schemes.

Sec.45 provides Town Planning Officer to prepare preliminary scheme. Sec.50 provides Compensation for land vested in local authority under sec.46 and restoration of such land in certain cases. Sec.51 provides final scheme. Sec.53 provides effect of final schemes. Sec.54 provides power of local authority to evict summarily.

Chapter VII provides Joint Town Planning Schemes.

Sec.62 provides joint town planning schemes. Sec.64 provides costs of scheme.

Sec.65 provides as under:

"Sec.65 For the purposes of this Act the increments shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of a plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme:

Provided that in estimating such values the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration."

"Sec.66 provides Contribution towards costs of schemes."

"(1) The costs of the scheme shall be met wholly or in part by a contribution to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer:

Provided that -

[(i) (a) Where the cost of the scheme does not exceed half the increment, the cost shall be met wholly by a contribution, and

(b) where it exceeds half the increment, to the extent of half the increment it shall be met by a

contribution and the excess shall be borne by the local authority;]

(ii) where a plot is subject to a mortgage with possession or to a lease the Town Planning Officer shall determine in what proportion the mortgagee or lessee on the one hand and the mortgagor or lessor on the other hand shall pay such contribution.

(iii) no such contribution shall be levied on a plot used, allotted or reserved for a public purpose or purpose of the local authority which is solely for the benefit of owners or residents within the area of the scheme; and

(iv) the contribution levied on a plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment of reservation.

(2) The owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

Section 67 of the Act makes provisions for certain adjustments and it reads thus:-

"67. The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contributions leviable from such persons, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme or the date of a notification under sub-section (1) of Section 24 and without reference to improvements due to the alteration of its boundaries."

Sec.68 provides transfer of right from original to reconstituted plot or extinction of such

right. Sec.69 provides compensation in respect of property or right injuriously affected by scheme. Sec.70 provides exclusion or limitation of compensation in certain cases. Sec.74 provides payment of net amount due to local authority. Sec.75 provides power of local authority to make agreement.

5.1(A) Learned counsel has also pointed out the provisions of the Bombay Town Planning Rules, 1955. The said rules have been enacted under Section 87 of the Bombay Town Planning Act, 1954.

Rule 3 provides publication of declaration under section 4. Rule 4 provides publication of development plan. Rule 5 provides Rule 4 to apply to development plan prepared by State Government. Rule 6 provides notices before entry under Sections 6 and 20. Rule 7 provides time limit for sanctioning development plan and regulation. Rule 9 provides manner of inquiry under sections 13, 16 and 29. Rule 11 provides inquiry procedure where ownership is disputed. Rule 12 provides publication of declaration under section 22. Rule 13 provides meeting of owners and framing of tentative proposals. Rule 14 provides publication of draft scheme under section 23. Rule 16 provides manner of publication of notification under section 24. Rule 17 provides contents of draft scheme. Rule 19 provides appointments of Town Planning Officer and President of Board of Appeal to be notified. Rule 21 provides procedure to be followed by Town Planning Officer. Rule 24 provides preliminary scheme. Rule 28 provides notice before enforcement of scheme. Rule 29 provides variation of scheme. Rule 30 provides time limit for claiming compensation."

5.2 Learned counsel has also invited our attention at Exh.29 record of rights of the land in question. Exh.28 brief history of the scheme. Exh.32 Map of the scheme which shows the original boundary shown in yellow and Final Plot is shown in Red and also another boundary shown in pink to show that how the land was used for the development purpose under the provisions of the Town Planning Act. He has also referred to the assessment register which sown that how the Municipality is entitled to Rs.63,063/regarding incremental contribution and Exh.33 showing the scheme being sanctioned and total amount to be levied Rs.1,03,139.25 and also invited out

attention at Exh.34 statutory notice dated 16.12.1946 addressed to the Union of India in this behalf and resolution to file suit against Union of India.

5.3 The learned counsel for the plaintiff has relied upon the decision of the Hon'ble Supreme Court in the case of State of Gujarat Vs. Shantilal Mangaldas and others reported in AIR 1969 SC 634, particularly he has relied upon para 13 and para 16 of the said judgment. He has further stated that in that case the Hon'ble Supreme Court was considering the provisions of the Bombay Town Planning Act particularly secs.53 and 67 of the said Act. The Hon'ble Supreme Court has held that it is a law for compulsory acquisition of property by the State as defined in Article 12 within the meaning of Article 31(2) of the Constitution and Sections 53 and 67 of the Act regarded as law for acquisition of land for public purposes do not infringe the fundamental right under Article 31(2) of the Constitution. It has been further stated that Section 53 provides for readjustment of titles by local authority in reconstituted plots and not for their vesting in local authority. The Hon'ble Supreme Court has also considered Sections 81 and 84 of the said Act and held that Section 81 merely provides that the land needed for the purpose of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Section 84 only contemplates a special class of cases in which the land which is included in a town planning scheme is needed by the State Government for a public purpose other than that for which it is included in the scheme. The Hon'ble Supreme Court has considered the entire scheme of the Act particularly para 13 and 16 the Hon'ble Supreme Court laid down the principle regarding interpretation of Section 67 and Section 71 of the Act which reads as under:

"para.13 Under the Act the cost of the scheme is to be met wholly or in part by contributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of each plot."

"para.16 The re-arrangement of titles in the various plots and reservation of lands for public purposes require financial adjustments to be made. The owner who is deprived of his land has to be compensated, and the owner who obtains a re-constituted plot in surroundings which are conducive to better sanitary living conditions

has to contribute towards the expenses of the scheme. This is because on the making of a Town Planning Scheme, the value of the plot raises and a part of the benefit which arises out of the unearned rise in prices is directed to be contributed towards financing of the scheme which enables the residents in that area to more amenities, better facilities and healthier living conditions. For that purpose provision is made in Sec.65 that the increment shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme, the market value of a plot included in the final scheme, estimated on the assumption that the scheme has been completed, would exceed at that date, the market value of the same plot estimated without preference to improvements contemplated by the scheme. By Section 66 the cost of the scheme is required to be met wholly or in part by contributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. .....

Section 67, it will clearly appear, is intended to make adjustments between the right to compensation for loss of land suffered by the owner, and the liability to make contribution to the finances of the scheme; and Section 71 is a corollary to Section 67. Section 71 provides:

"If the owner of an original plot is not provided with a plot in the final scheme or if the contribution to be levied from him under Section 66 is less than the total amount to be deducted therefrom under any of the provisions of this Act, the net amount of his loss shall be payable to him by the local authority in cash or in such other way as may be agreed upon by the parties."

5.4 Learned counsel has also relied upon another judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Prakash Amichand Shah Vs. State of Gujarat and others reported in AIR 1986 SC 468 and submitted that in this case also the Hon'ble Supreme Court has considered the provisions of the Bombay Town Planning Act particularly Sections 53, 67 and 71 of the Act and thereafter whatever the judgment delivered by the Hon'ble Supreme Court is squarely applies in this case. He has relied upon paras 12, 14 and 15 of the said judgment which reads as under:

"para.12 Section 64 of the Act specifies what sums should be considered as costs of a town planning scheme. Under the provisions of the statute the costs of the town planning scheme is to be partly met from the contribution from the plot-owners and partly from the funds of the local authorities. There are provisions in section 66 of the Act relating to the contribution towards costs of scheme.

Sec.66 ......

xxx

xxx

Sec.67 ....

xxx

xxx

xxx

"para.14 Where the cost of the scheme does not exceed half the increment, the cost shall be wholly met by the contribution of the plot holders but where it exceeds half the increment, to the extent of half the increment it shall be met by the contribution from plot-holders and the excess shall be borne by the local authority. The rules for levying incremental contribution are set out in section 66 of the Act, referred to above. It is seen that the valuation of the land is done in three stages:-

(i) Original value of the land as on the date of the first notification which does not take into account any of the effects of the improvement scheme that is to follow.

(ii) Semi-final value, that is the value of the reconstituted plots allotted in their new size and shape but in their original condition, ignoring the benefit from the scheme.

(iii) Final value, that is the enhanced value of the reconstituted plots due to the scheme."

"para.15 The difference between the first two is the compensation that is due to the owner. The difference between the second and third is the increment of the value of the reconstituted plots that remain with the owner on the completion of the scheme and only 50 per cent of the increment can be recovered from the owner as his increment contribution towards the cost of the scheme and

no more. Any excess incurred will have to be met by the local authority from its funds."

5.5 Learned counsel for the appellant submitted that the learned trial Judge has dismissed the suit of the plaintiff only on the ground that the incremental contribution amounts to tax and in view of Article 285 of the Constitution of India, the Union of India is exempted from payment of tax and therefore the defendant is not liable to pay incremental tax. He submitted that the aforesaid reasoning and the conclusion of the learned trial Judge is clearly unjustified and unwarranted. He submitted that the provisions of the Bombay Town Planning Act has been considered by the Hon'ble Supreme Court particularly the constitutional validity in the case of Maneklal Chhotalal and others Vs. M.G.Makwana and others reported in AIR 1967 SC 1373. There also the provisions of the Act and the Scheme were challenge on the ground that the same is violative of Articles 14 and 19 of the Constitution of India. For uphelding the said contention particularly the question as to whether State legislature has power to levy the tax or not. For considering this in that case the contention was raised by the learned advocate for the petitioner that it is a tax levied by the State on capital assets for which also there is no power to be found in any of the Entries in List II and III. The Hon'ble Supreme Court considered the said question and he has referred to paras 37, 38, 39, 41, 42 and 43 which reads as under:

"para 37. The first question that arises for consideration is regarding the competency of the State Legislature to enact the statute in question. According to Mr.Sen, learned counsel for the petitioners, the Act provides for transfer of rights, from one person, in a plot originally owned by him, to another person to whom it may be allotted under the Act. The Act also provides for extinguishment of rights of the original owner in the plots concerned. These are, according to learned counsel, not covered by any of the Entries either in List II or List III of the Seventh Schedule to the Constitution. Again, it is pointed out, that the Act requires owners of the plots to pay compensation which is really, so to say, a tax levied by the State on capital assets, for which also there is no power to be found in any of the Entries in List II or List III.

"para 38. The State seeks to justify the

competency of the Legislature, relying upon the Entries Nos.6 and 18 of List II and Entry No.20 of List III, of the Seventh Schedule.

"Para 39. Having due regard to the scheme of the Act as well as the provisions contained in it, in our opinion, the competence of the State Legislature to enact the same can be rested either on Entry No.18 of List II, or on Entry No.20 of List III, of the Seventh Schedule. Entry No.18 of List II is as follows:

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land improvement and agricultural loans; colonization."

"para 40. The legislation, in question, can be broadly stated to be a legislation in regard to land. As pointed out by this Court in Sri Ram Narain v. State of Bombay, (1959) Supp 1 SCR 489 at p.496 : (AIR 1959 SC 459 at p.463):

"It is well-settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation".

"Further, in Navinchandra Mafatlal v. Commissioner of Income-tax, Bombay City, 1955 1 SCR 829 at p.836 : (AIR 1955 SC 58 at p.61) this Court expressed the rule of interpretation, as follows:

"The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider, that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

In construing Entry No.18, of List II, this Court, in Atma Ram v. State of Punjab, (1959) Supp 1 SCR 748 at p.756 : (AIR 1959 SC 519 at

p.523) adopted the interpretation placed by the Judicial Committee of the Privy Council in Megh Raj v. Allah Rakhia, 74 Ind App 12 : (AIR 1947 PC 72) while construing Item 21 of List II (Provincial List) of the Seventh Schedule to the Government of India Act, 1935, which was more or less substantially, in terms of Entry No.18 of List II of the Seventh Schedule to the Constitution. Their Lordships of the Privy Council concluded that Item 21 relating to land, would include mortgages as an incidental and ancillary subject. This Court, in referring to that decision, observed at p.755 (of SCR): (at p.523 of AIR):

"Their Lordships observed that Item 21 aforesaid, forming a part, as it did, of the Constitution, should on ordinary principles, receive the widest construction, unless for some reasons, it is cut down either by the terms of that item itself, or by other parts of the Constitution, which have, naturally, to be read as a whole; and then proceeded to make the following very significant observations:

"As to item 21, 'land', the governing word, is followed by the rest of the item, which goes on to say, 'that is to say'. These words introduce the most general concept - 'rights in or over land'. 'Rights in land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters..."

"para 42. We are further satisfied that the competency of the State Legislature can also be rested under Entry No.20 of List III, which is as follows:

"20. Economic and social planning". In 'Principles of Town and Country Planning by Lewis Keepl, the scope of planning has been stated thus:

"Planning has both social and economic

aims. Socially, successful Planning tends to make people's lives happier because it results in a physical environment which conduces to health, which allows convenient and safe passage from place to place which facilitates social intercourse and which has visual attractiveness. The economic results of good Planning also, of course, conduce to increase happiness, but not quite so directly. A proper spatial relationship between the communities in a region and the constituent parts of a town compactness of development, and an efficient arrangement of communication routes all result in human activities being carried on more efficiently and less wastefully, and thus increase wealth".

In Corpus Juris Secundum. Vol.70, the word 'planning' is stated to mean:

"In connection with municipalities, the term connotes a systematic development contrived to promote the common interest in matters embraced within the police power, with particular reference to the location, character, and extent of streets, squares, parks and to kindred mapping and charting".

In Encylopaedia Britannica, Vol.5, 'City Planning' is stated to mean:

"the guidance of the growth and change of urban areas. As such, it is aimed at fulfilling social and economic objectives which go beyond the physical form and arrangement of buildings, streets, parks, utilities and other parts of the urban environment. City planning takes effect largely through the operations of government and requires the application of specialised techniques of survey, analysis, forecasting and design. Thus City planning may be described as a social movement, as a Governmental function, or as a technical profession. Each aspect has its own concepts, history and theories. Together they fuse into

the effort of modern society to shape and improve the environment within which increasing proportions of humanity spend their lives: the city."

"para 43. We have already very elaborately referred to the various provisions contained in the Act and we have also pointed out that the original Act of 1915 was passed with a view to regulate the development of certain areas with the general object of framing proper schemes for the healthy, orderly, development of the area in question and it is with a view to achieve this purpose that a very elaborate procedure and machinery has been prescribed in the Act. Therefore, the contention of learned counsel for the appellant that the State Legislature was not competent to enact the statute, in question, cannot be accepted."

5.6 Learned counsel for the appellant has stated that the contention of the Union of India that the incremental contribution is a tax and therefore under Article 285 of the Constitution of India the Union of India is exempted from payment of tax. The said arguments is misconceived and unwarranted. He stated that the Town Planning Act has been enacted as per Entry 20 of the Concurrent List III as per the judgment of the Hon'ble Supreme Court in Makwana's case. He submitted that the scheme of the Constitution of India particularly all the three lists has been considered by the Hon'ble Supreme Court in the case of M/s.Hoechst Pharmaceuticals Ltd. Vs. State of Bihar reported in AIR 1983 SC 1019 particularly para 76 on page 1044 the Hon'ble Supreme Court has observed like this:

"para 76. It would therefore appear that there is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. In M.P.Sundararaier and Co. Vs. State of Andhra Pradesh, 1958 SCR 1422 : (AIR 1958 SC 468) this Court dealt with the scheme of the separation of taxation powers between the Union and the States by mutually exclusive lists. In List I, Entries 1 to 81 deal with general subjects of legislation; Entries 82 to 92-A deal with taxes. In List II, Entries 1 to 44 deal with general subjects of legislation; Entries 45 to 63 deal with taxes. This mutual exclusiveness

is also brought out by the fact that in List III, the Concurrent Legislative List, there is no entry relating to a tax, but it only contains an entry relating to levy of fees in respect of matters given in that list other than court-fees. Thus, in our Constitution, a conflict of the taxing power of the Union and of the States cannot arise."

5.7 He, therefore, submitted that in view of the judgment of the Hon'ble Supreme Court in Makwana's case and Hoechst Pharmaceuticals Ltd., it is abundantly clear that incremental contribution levied under the Town Planning Act which has been enacted under Entry 20 of Concurrent List III cannot be amount to tax. In view of the same the contention of the Union of India that it is a tax is misconceived and unjustified.

6. On the other hand, Mr.D.N.Patel, learned counsel for the respondent has tried to support the reasonings of the learned Judge. In fact he has relied upon Article 285 of the Constitution of India and also Article 366(28) of the Constitution of India which refers to taxation. definition of taxation. Article 285 of the Constitution reads as under:

"Art.285. (1) The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

"Article 366(28) of the Constitution reads as under:

"taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly."

6.1 On the conjoint reading of Article 285 and Article 366(28) of the Constitution of India, learned counsel for the respondent submitted that in view of the

same the incremental contribution is an impost under the provisions of the Bombay Town Planning Act and therefore it falls within definition of taxation under Article 366(28) of the Constitution of India and, therefore, the Municipality has no power to levy the incremental contribution for the properties of the Union of India.

6.2 In support of the aforesaid contentions, learned advocate for the respondent has relied upon the Division Bench judgment of this Court in the case of Union of India Vs. Rajkot Municipal Corporation reported in 2002(3) GLR 2752 particularly para 9.1 on page 2759 which reads as under:

> "para 9.1 It will be noticed that, under Art.285(1), there is an exemption in respect of the property of the Union from all taxes imposed by a State or by any authority within a State. The Municipal Corporation would be an authority within a State, and therefore, even a Municipal Corporation cannot impose taxes on the property of the Union which may be within its limits unless law made by the Parliament otherwise provides. The words "save insofar as Parliament may be law otherwise provide" clearly rule out any method short of enacting such law by the Parliament for taking away the exemption conferred by Art.285(1) from all taxes imposed by a State or by such authority within the State. So far as the premises occupied by the Postal Department and the Accountant General are concerned, it is not even urged that there is any law made by the Parliament taking away the exemption, from taxes by the State or any authority within the State, which has been granted in respect of the properties of the Union."

Our Conclusion:

7. We have considered the submissions of the learned counsel for the appellant and the respondent. We have also considered the provisions of the Town Planning Act and the judgments of the Hon'ble Supreme Court in the case of State of Gujarat vs. Shantilal Mangaldas (supra), Prakash Amichand Shah (supra) and Maneklal Chhotalal (supra), and also the scheme of the Act and also the judgment of the Supreme Court in the case of Hoechst Pharmaceuticals. We have also considered Article 285 of the Constitution of India and definition of

taxation contained in Article 366(28) of the Constitution of India.

8. What is meant by tax:
Taxing Statutes:

8.1 "para 43. A neat definition of what "tax" means has been given by Latham C.J. of the High Court of Australia in - 'Matthews v. Chicory Marketing Board", 60 CLR 263 at p.276 (M().

"A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment 'for services rendered'."

This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law vide - 'Lower Mainland Diary v. 'Crystal Dairy Ltd.' 1983 AC 168 (N).

The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying 'that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State."

8.2 "para 44. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Oridinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay, vide Lutz on "Public Finance" P.215."

[Re. Judgment of the Hon'ble Supreme Court in the case of The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in AIR 1954 SC 282 paras 43 and 44 on page 295]

8.3 "The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the taxpayer and the public authority. It is a part of the common burden and the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

8.4 Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

8.5 The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

8.6 The distinction between a tax and a fee lies primarily in the fact that a tax levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest."

[Re. Para 8.3 to 8.6 Judgment of the Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti and others Vs. Orient Paper & Industries Ltd. reported in (1995) 1 SCC 655 on page 672 and 673.]

8.7 Tax and fee are impositions made by a State for raising revenue. A tax is imposed for public purpose for raising general revenue of the State. A fee in contrast is imposed for rendering services and bears a broad correlationship with the services rendered. Taxes are specifically named and distributed between the Union and States by various entries in List I and List II of the Constitution. A tax not so mentioned can be levied by the Union under Parliament's residuary power in entry 97 of List I. Power to levy fee is conferred by the last entry in each List in general terms in respect of any of the matters in the List. By a taxing statute in this Chapter is meant any Act making compulsory imposition whether of tax or fee. But a taxing statute must be distinguished from those where a duty or free is charged by the State for parting with its privilege of dealing in deleterious commodities such as opium and liquor.

[Re. G.P.Singh, 7th Edition, Interpretation of Statute, Chapter 10 page 575]

9. We have also considered the judgment of the Hon'ble Supreme Court in M.G.Makwana's case (supra) as well as Hoechst Pharmaceutical's case (supra). These two decisions led to the conclusion that levy under the Bombay Town Planning Act is not a tax. It may be noted that as per these two judgments of the Hon'ble Supreme Court, the act has been enacted under Entry 20 of the concurrent List III do not possess any power to levy tax and therefore by no stretch of imagination it can fall within the definition of tax. This is a one kind of incremental contribution for development charges and therefore the plaintiff has power to levy the same and therefore the contention raised by the plaintiff is legal and valid and therefore the contention raised by the Union of India that it is tax and covered by Article 285 of the Constitution of India read with Article 366(28) of the Constitution of India is not correct.

10. We have considered what is meant by tax and what is meant by fees and considered the judgements of the Hon'ble Apex Court in the case of THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS, MADRAS VS. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SHRI SHIRUR MUTT (supra) and KRISHI UPAJ MANDI SAMITI AND OTHERS VS. ORIENT PAPER & INDUSTRIES LTD. (supra) and also the principle laid down by G.P. Singh in his well known treatise. From the aforesaid pronouncement of law, it emerges, in our view, that tax is a compulsory contribution to the support of Government which is levied on persons, property, income, commodities, transactions etc. The person has no

volition. The person did not get any benefits out of payment of tax. No tax shall be levied or collected except by authority of law under Article 265 of the Constitution of India. On the other hand, as regards fees, they are charged for special service rendered to individual or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. There may be some compulsion for payment of fees but not the compulsion like payment of tax.

10.1 As we have seen earlier in this case originally the land - open plot was barren land without any facility. After implementation of the Town Planning Scheme, the land got facilities of asphalt, roads, storm water, drain, water supply pipe lines, undergone drainage, electric street lighting, school, pumping station, play-ground, etc. and in view of the same the area included in the scheme got all the necessary amenities for a happy community life and therefore the area developed into a healthy suburb so that environment of the land has been completely changed. The occupier or the owner of the land got those benefits by paying incremental contribution under the Town Planning Scheme. In our view, the incremental contribution can be regarded as one kind of fee for obtaining such services and cannot be characterized as a tax as we have discussed various judgments of the Hon'ble Supreme Court in this behalf.

11. In view of the aforesaid discussions, the judgment and decree dated 26th February, 1982, passed by the learned City Civil Judge, Ahmedabad, in Civil Suit No.2680 of 1977 is quashed and set aside. The appeal is allowed with no order as to costs. We confirm the findings of the learned Judge that the suit is maintainable at law but we quash and set aside the reasonings of the learned trial Judge that the Union of India is not liable to pay incremental contribution in view of Article 285 of the Constitution of India for the reasons which we have given in this behalf.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)

syed/